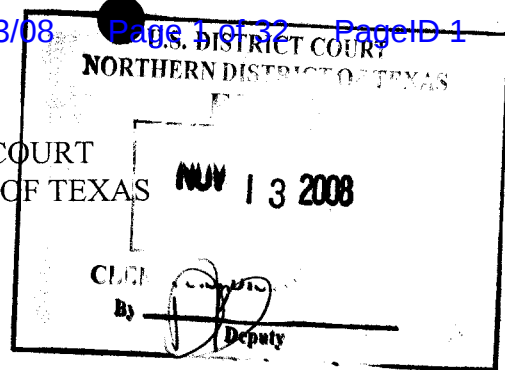


#26677

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



WALDO PEREYDA,

Plaintiff,

v.

NARSTCO, INC.

Defendant.

ORIGINAL

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CIVIL ACTION NO. **3-08-CV-2029-L**

**NOTICE OF REMOVAL**

Defendant NARSTCO, Inc. ("Defendant") notifies the Court, pursuant to 28 U.S.C. §§1441 and 1446(a), of the removal of the action styled *Waldo Pereyda v. Narstco, Inc.*, Cause No. 77338, filed in the District Court of Ellis County, Texas, 40<sup>th</sup> Judicial District (the "State Court Action").

Defendant removes this case on the grounds of federal question jurisdiction, 28 U.S.C. § 1331, and state as follows:

1. Plaintiff filed the State Court Action on October 10, 2008, in the 40th Judicial District Court of Ellis County, Texas. Defendant was served with process, including a copy of Plaintiff's Original Petition in the State Court Action (the "Petition"), on October 15, 2008, when Defendant's registered agent for service of process was served. Removal is timely in that no more than 30 days have elapsed since the Petition was served. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999).

2. In accordance with Local Rule 81.1, copies of all process, pleadings, and orders in the State Court Action have been indexed and are attached to this Notice of Removal as shown below:

Exhibit A- An index of documents filed in the State Court Action and a copy of each document filed in the State Court Action.

Exhibit B- A copy of the docket sheet in the State Court Action.

Exhibit C- A separately signed certificate of interested persons.

3. Plaintiff's Petition in the State Court Action alleges that Defendant violated two federal statutes: (1) "the Equal Employment Opportunities Act,"<sup>1</sup> 42 U.S.C. §§2000e-2000e-17 and (2) 42 U.S.C. §1981. *Petition* ¶¶ 16-17. Those claims give the Court original jurisdiction over this cause under 28 U.S.C. §1331 because the claim arises under the Constitution, laws, or treaties of the United States, and thus presents a federal question.

4. The Petition also asserts state-law claims for violation of the Texas Commission on Human Rights Act (Chapter 21 of the Texas Labor Code) and for assault, intentional infliction of emotional distress, and breach of contract. *See id.* ¶¶ 16-20. The state-law claims Plaintiff asserts are removed as part of the case as a whole and may be retained by the Court pursuant to the Court's supplemental jurisdiction. *See* 28 U.S.C. § 1367; *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 163-66 (1997).

5. The factual allegations made in this pleading will be supported by affidavit or other summary-judgment-type evidence should the Court so request. *See Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5th Cir. 1995) (facts supporting removal ordinarily should be set out in the removal petition and the Court can later require summary-judgment-type evidence should questions about jurisdiction remain); *see also Burden v. General Dynamics Corp.*, 60 F.3d 213, 217 (5th Cir. 1995).

6. This action may be removed to the United States District Court for the Northern District of Texas, Dallas Division, because the action is pending in Ellis County, Texas, which is within the jurisdiction of the Dallas Division. *See* 28 U.S.C. §§ 124(a)(1), 1446(a).

---

<sup>1</sup> Although Plaintiff's Original Petition refers to the Act as the "Equal Employment Opportunities Act," the correct title of the Act is "Title VII of the Civil Rights Act of 1964." Plaintiff appears to have confused the title of the Act with the administrative agency that enforces the Act: the Equal Employment Opportunity Commission. *See* 42 U.S.C. § 2000e-4

7. Defendant will give written notice of the filing of this Notice to Plaintiff and will file a copy of this Notice with the Clerk of the state court pursuant to 28 U.S.C. § 1446(d).

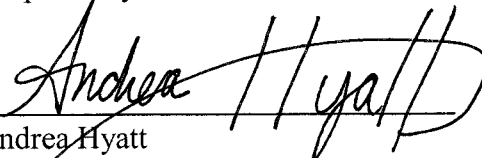
8. Defendant therefore removes the State Court Action to this Court, and requests that the Court issue any orders necessary to stay proceedings in the State Court Action and assume jurisdiction over this action for all purposes.

Dated: November 13, 2008.

---

(2008) (creating the Equal Employment Opportunity Commission).

Respectfully submitted:

  
\_\_\_\_\_

Andrea Hyatt

Texas Bar No. 24007419

Marc H. Klein

Texas Bar No. 11563012

THOMPSON & KNIGHT LLP

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, Texas 75201-2533

Telephone: (214) 969-1577

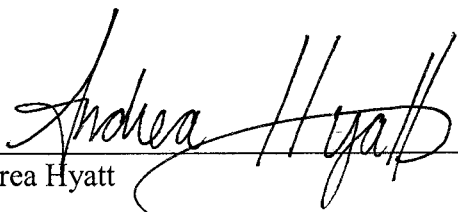
Facsimile: (214) 880-3209

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

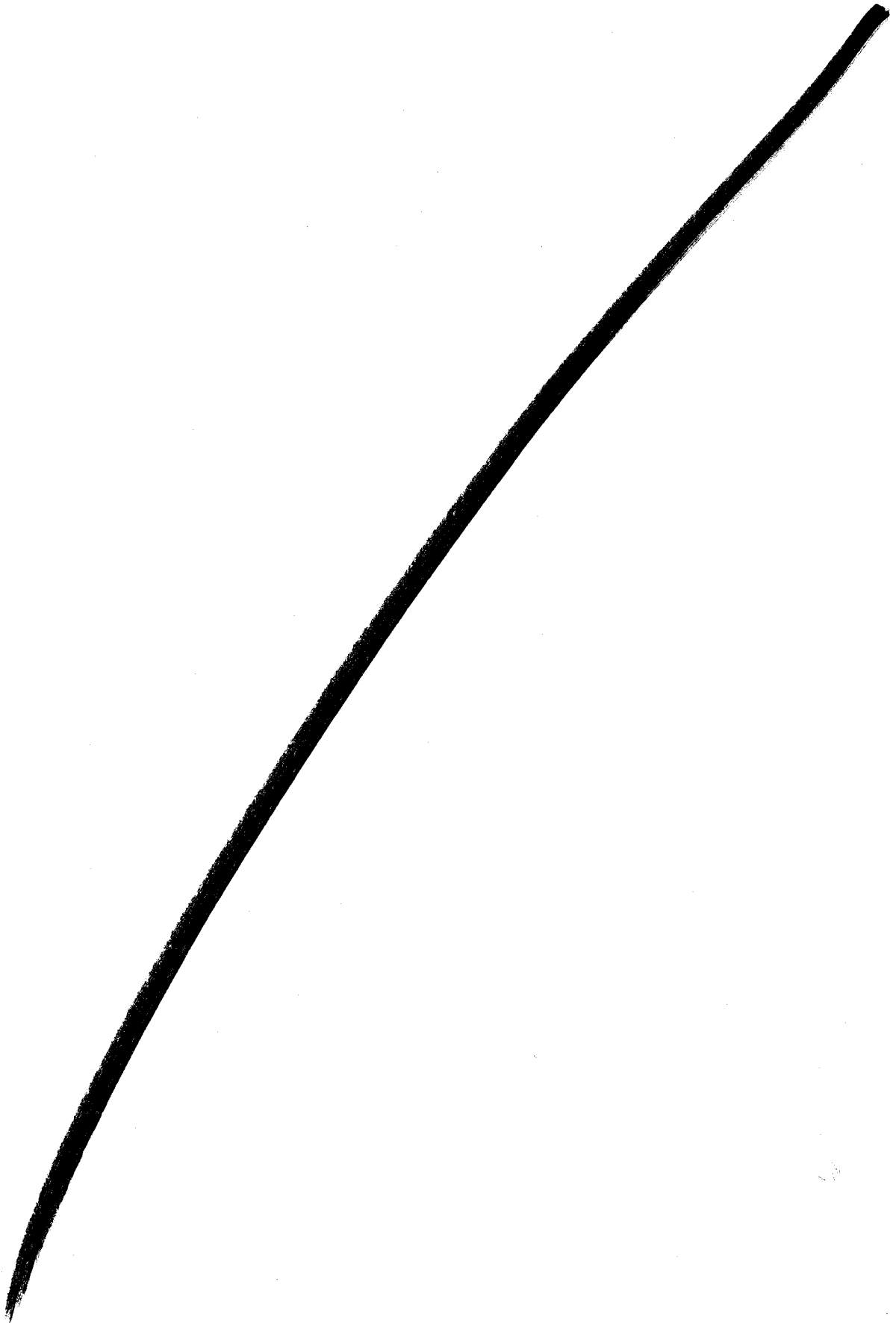
I hereby certify that on November 13, 2008, the foregoing document was served by certified mail, return-receipt requested, on plaintiff's counsel of record:

John E. Schulman  
Margaret K. Schulman  
The Schulman Law Firm, P.C.  
6440 North Central Expressway, Ste. 210  
Dallas, TX 75206

  
\_\_\_\_\_

Andrea Hyatt

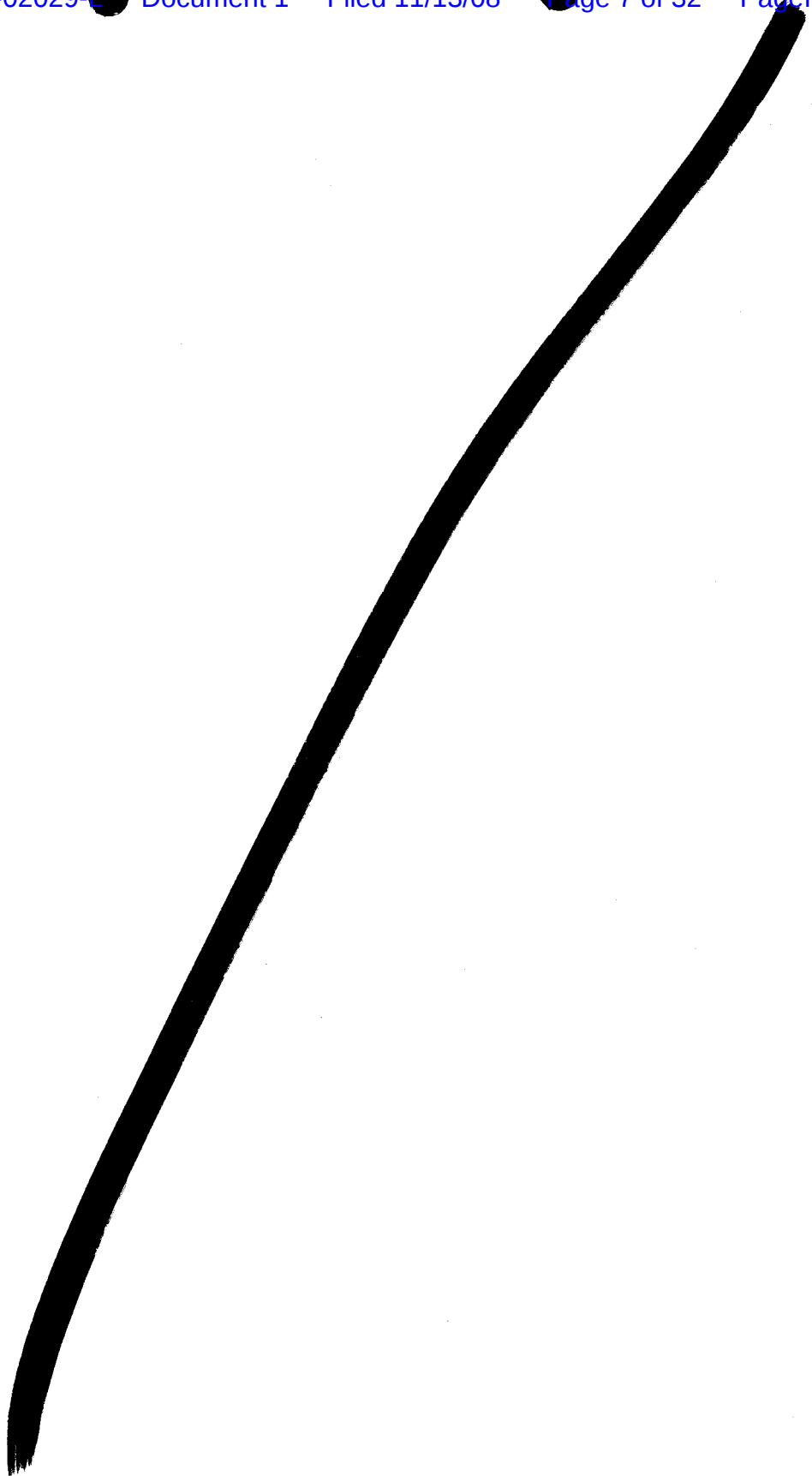
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**INDEX OF DOCUMENTS FILED IN STATE COURT ACTION**

<b><u>Tab</u></b>	<b><u>Document</u></b>	<b><u>Date Filed</u></b>
1.	Plaintiff's Original Petition	October 10, 2008
2.	Executed Citation to NARSTCO, Inc.	October 16, 2008
3.	Defendant's Original Answer	November 10, 2008

999999 999999 DALLAS 2420983.1



02029-L Docu  
~~10-15-08~~  
10-15-08

**COPY**

CAUSE NO. 77338

FILED FOR  
2009 OCT 10 PM 12:07  
DISTRICT COURT  
MELANIE REED  
DISTRICT CLERK  
ELLIS COUNTY, TX

**WALDO PEREYDA,**  
**Plaintiff**

IN THE DISTRICT COURT

**VS.**

40 JUDICIAL DISTRICT

**NARSTCO, INC.,  
Defendant**

ELLIS COUNTY, TEXAS

## PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Waldo Pereyda, and hereby files this, his Original Petition complaining of Defendant NARSTCO, Inc. In support of his claims, Plaintiff respectfully states:

I.

### DISCOVERY CONTROL PLAN: LEVEL 3

1. This suit should be governed by a discovery control plan under Level 3, Rule 190.1 of the Texas Rules of Civil Procedure, designed to suit the needs of this particular case.

## II.

## INTRODUCTION

2. This is a civil rights case alleging unlawful racial discrimination and unlawful retaliation. Plaintiff also alleges that he was assaulted on multiple occasions and subjected to intentional infliction of emotional distress. Plaintiff also alleges that his Employment Agreement was breached by Defendant.

### III.

## PARTIES

3. Plaintiff Waldo Pereyda is an Hispanic American male, and is an adult individual who resides in Ennis, Ellis County, Texas.

4. Defendant NARSTCO, Inc., is a Texas corporation which at all times relevant to this lawsuit was licensed to do business in the state of Texas. Defendant may be served with process by serving its registered agent, Mr. Jerry R. Gibson, Jr., 700 North Pearl Street, 25<sup>th</sup> Floor, Dallas, Texas 75201. Defendant is in the business of manufacturing steel railroad ties and accessories.

IV.

**JURISDICTION AND VENUE**

5. The state courts of Texas have general jurisdiction over this lawsuit. Venue is proper in Ellis County, because all or a substantial part of the acts or omissions giving rise to the claims occurred in Ellis County, and because Defendant has its principal place of business in Ellis County, Texas.

V.

**PROCEDURAL HISTORY**

6. Plaintiff Pereyda filed a timely charge of discrimination and subsequently received notice of his right to file a lawsuit on August 11, 2008. Plaintiff Pereyda has therefore satisfied all the prerequisites for filing this lawsuit. This suit has been timely filed.

VI.

**STATEMENT OF FACTS**

7. At all times relevant to this action, Plaintiff Pereyda was an employee of the Defendant NARSTCO, Inc.

8. Plaintiff was originally hired to work for Defendant as a temporary employee. Upper management considered him to be extremely reliable and honest and he was ultimately hired as a regular employee. Plaintiff worked on a production line supervised by Mr. David Stewart.

9. Supervisor Stewart is a white-Anglo male. He was known by upper management to assign the dirtiest and least desirable jobs to Waldo Pereyda, Hispanic, and co-worker Maldonado Davenport, who is African-American, but that discriminatory practice never stopped. It was reported to upper management that Supervisor Stewart referred to the Plaintiff as a "dumb, fat Mexican" and to Maldonado Davenport as a "lazy nigger," but Stewart never stopped using racial slurs. Supervisor Stewart was also known by upper management to lie specifically about whether Plaintiff was stirring up trouble and complaining about holiday hours. (It was Supervisor Stewart himself who was complaining). Supervisor Stewart was, in fact, known by upper management to lie repeatedly.

10. While Plaintiff was still employed, co-owner Sean Keightly was asked to authorize diversity training at the Midlothian plant. This request was made, in part, because of the known racist behavior by Supervisor David Stewart. Mr. Keightly's response was "*That crap is not necessary here.*"

11. Beginning on or about April 10, 2007, and continuing until Plaintiff's termination, Supervisor David Stewart engaged in a barrage of verbal and physical tortious misconduct and racial harassment of Plaintiff Waldo Pereyda. The verbal harassment included calling Plaintiff Pereyda a "*stupid wetback*," a "*big dumb-ass Mexican*," "*South of the Border*," a "*Shreck wetback*," "*good for nothing wetback - a bitch is smarter than you*," a "*red bloody tampon*," a "*dumb Mexican*," a "*stupid fuck*," and a "*stupid wetback*." He also told Plaintiff Waldo Pereyda that he and Mr. Keightly had decided "*not to hire any more wetbacks*." He frequently made racist remarks about Mexicans and blacks in general. Supervisor Stewart engaged in similar verbal racist abuse directed towards Maldonado Davenport, but not did direct similar verbal abuse towards white-Anglo employees.

12. The barrage of harassment directed at Plaintiff Waldo Pereyda by Supervisor Stewart was physical as well as verbal including, but not limited to, the following specific examples:

- Supervisor Stewart repeatedly made gestures with his hands and body indicating that he wanted to engage in sexual acts with Plaintiff.
- Supervisor Stewart approached Plaintiff from his blind eye side on more than one occasion and pushed a crowbar towards and up and into the cleft of Plaintiff's buttocks.
- Supervisor Stewart manipulated the controls on the punch press so that Plaintiff was sprayed with coolant.
- Supervisor Stewart made a noose, showed it to Plaintiff and attempted to lasso him with it. (When that effort failed, Stewart released the noose, and then caught and hog-tied African-American employee Maldonado Davenport, lifted him off of the floor, then dropped him to the floor while Maldonado was still hog-tied.)
- Supervisor Stewart slapped and grabbed Plaintiff on the buttocks on several occasions.
- Supervisor Stewart threw heavy metal slugs and banding clips at Plaintiff, at times, striking Plaintiff's body.
- Supervisor Stewart sprayed Plaintiff's shirt and pants in the buttocks area with spray paint.
- Supervisor Stewart sprayed WD-40 on Plaintiff while Plaintiff was working under a table.
- Supervisor Stewart ordered Plaintiff to clean the inside of the spade press while it was still turned on.
- Supervisor Stewart sprayed Fastenal SharpCool Synthetic Fluid mixture on Plaintiff, aiming towards his eyes, knowing that Plaintiff was already blind in one eye.
- Supervisor Stewart ordered Plaintiff to take the last piece of product off the crop (cutting) press while the press was still operating.
- Supervisor Stewart tried to place a dead rat down the front of Plaintiff's shirt.
- Supervisor Stewart ordered Plaintiff to remove his safety equipment and use a metal torch to cut scrap metal, which resulted in Plaintiff suffering burns on his scalp and arms.
- Supervisor Stewart put hot metal shavings down Plaintiff's back.

- Supervisor Stewart insisted that Plaintiff, a diabetic who needed to keep his feet dry, work in the rain.
- Supervisor Stewart pinched Plaintiff's nipples.

As evidenced by the partial list above, harassment of Waldo Pereyda by Supervisor Stewart was severe and pervasive.

13. Supervisor Stewart engaged in similar racist and tortious physical misconduct directed towards other minority employees but not white-Anglo employees. Seeing and hearing the barrage of harassment by Supervisor Stewart, some other employees also engaged in verbal and physical racial harassment of Plaintiff and other minority employees, adding to the hostile working environment suffered by Plaintiff and other minorities.

14. On or about September 27, 2007, Plaintiff filed a written complaint with the Equal Employment Opportunity Commission. The next day Plaintiff returned to work and advised management that he had filed a discrimination charge. He was fired that same day based upon falsified charges of misconduct on his part.

15. Plaintiff was employed pursuant to a written Employment Agreement which provided that if he was terminated "without cause," he was entitled to severance pay. Plaintiff was terminated without any just or sufficient cause and he was denied his severance pay.

## **VII.**

### **CLAIMS**

#### **Race Discrimination**

16. As alleged above in substantial detail, Plaintiff Pereyda was the victim of many months of on-going discrimination and harassment in violation of the Equal Employment Opportunities Act, 42 U.S.C. §§2000e-2000e-17, the Texas Commission on Human Rights Act, Chapter 21, Texas Labor Code, and 42 U.S.C. §1981.

### **Unlawful Retaliation**

17. As alleged above in substantial detail, Defendant also violated the Equal Employment Opportunities Act 42 U.S.C. §§2000e-2000e-17, the Texas Commission on Human Rights Act, Chapter 21 Texas Labor Code, and 42 U.S.C. §1981, by retaliating against Plaintiff Pereyda because he opposed discrimination at his workplace.

### **Assault**

18. As alleged above in substantial detail, on multiple occasions, Defendant's supervisor, using the authority of his office, committed the tort of offensive physical contact upon Plaintiff's person. Defendant is responsible for each and every incident of that tortious misconduct.

### **Intentional Infliction of Emotional Distress**

19. The relentless verbal and physical acts of misconduct by Supervisor David Stewart as alleged above were outrageous and of such a nature that they should not be tolerated in a civilized society. The misconduct was intended to cause and did cause Plaintiff to suffer from severe emotional distress. Defendant is therefore responsible for the tort of intentional infliction of emotional distress.

### **Breach of Contract**

20. As alleged above in substantial detail, Defendant breached Plaintiff's Employment Agreement by terminating Plaintiff without cause.

## **VIII.**

### **EXEMPLARY AND PUNITIVE DAMAGES**

21. Defendant has acted with conscious indifference to the rights, safety, or welfare of the Plaintiff Waldo Pereyda and with actual subjective awareness that its conduct would likely cause harm to the Plaintiff. Alternatively, Defendant acted with the degree of malice necessary to

support an award exemplary and punitive damages and such damages should be awarded in this case for the good of the public to make an example of Defendant and to punish Defendant for its malicious misconduct.

IX.

**REQUEST FOR DISCLOSURE**

22. Plaintiff requests that, pursuant to Tex. R. Civ. P. 194, Defendant disclose, within 50 days of service of this request, any information or material described by Texas Rule of Civil Procedure 194.2.

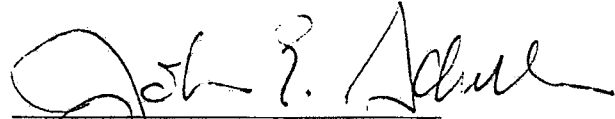
X.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited appear and answer the allegations in this Petition and that upon trial of this matter, that he be granted the following relief:

- a) economic damages;
- b) reinstatement or front pay;
- c) back pay;
- d) loss of earning capacity;
- e) damages for emotional distress and loss of enjoyment of life;
- f) damages for physical distress and pain;
- g) punitive damages;
- h) exemplary damages;
- i) attorney's fees and costs;
- j) equitable injunctive relief; and
- k) any such further relief as this Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Schulman", written over a horizontal line.

John E. Schulman

SBN 17833500

Margaret K. Schulman

SBN 17833900

THE SCHULMAN LAW FIRM, P.C.

6440 North Central Expressway, Ste 210

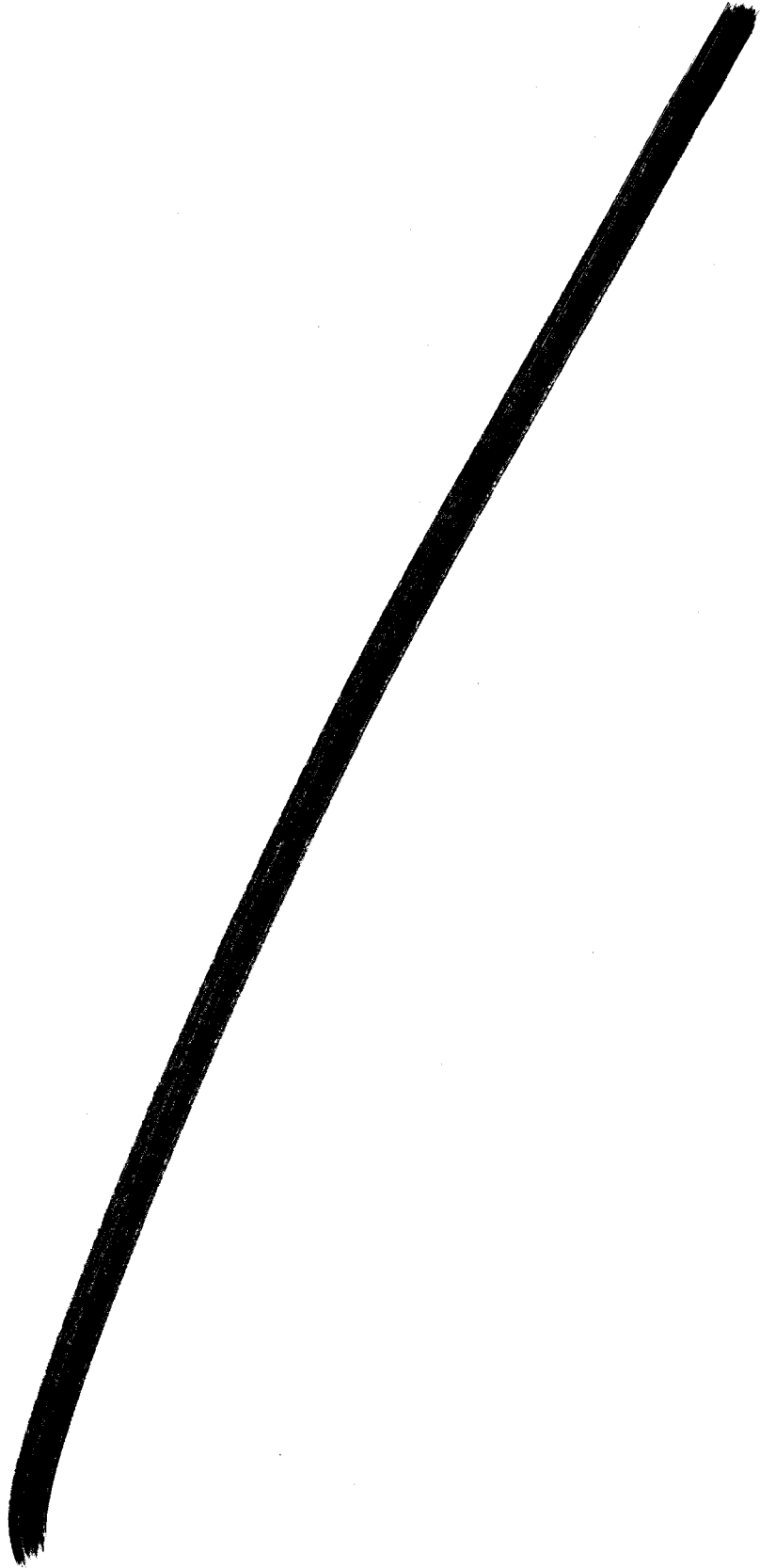
Dallas, Texas 75206

214-361-2580 telephone

214-361-6580 facsimile

[jschulman@schulmanlaw.com](mailto:jschulman@schulmanlaw.com)

COUNSEL FOR PLAINTIFF



<p>REC'D 2:00 PM 10-14-08</p>	<p>THE STATE OF TEXAS COUNTY OF ELLIS CAUSE NO: 77338 CITATION</p>	<p>ORIGINAL FILED FOR RECD 2008 OCT 16 PM 1:18 MELANIE REED DISTRICT CLERK ELLIS COUNTY, TX</p>
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<p>TO: NARSTCO INC REG AGENT JERRY R. GIBSON JR 700 N. PEARL STREET, 25TH FLOOR DALLAS, TX 75201</p>	<p>3:15 PM 10-14-08 ME 10-15-08 9:55 AM SERVED</p>
--	--

Defendant, in the hereinafter styled and numbered cause: 77338

You are hereby commanded to appear before 40TH JUDICIAL DISTRICT COURT of ELLIS COUNTY, TEXAS to be held at the courthouse of said county in the City of Waxahachie, County of Ellis County, Texas, by filing a written answer to the petition of Plaintiff at or before 10:00 A.M. of the Monday next after the expiration of 20 days after the date of service hereof, a copy of which accompanies this citation, in cause number 77338 styled

**WALDO PEREYDA  
-VS-  
NARSTCO, INC.**

Filed in said court on the 10/10/2008

The name and address of the attorney for plaintiff, or the address of the plaintiff is: SCHULMAN, JOHN E., 6440 N. CENTRAL EXPWY, STE 210, DALLAS, TX 75206

**NOTICE TO DEFENDANT:** "You have been sued. You may employ an attorney. If you or your attorneys do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of 20 days after you were served this citation and petition, a Default Judgment may be taken against you."

WITNESS: Melanie Reed, District Clerk of the District Court of Ellis County, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT AT COUNTY OF ELLIS, TEXAS, ON THIS THE 10th day of October, 2008.

Melanie Reed, District Clerk  
1201 N Hwy 77 Suite 103  
Waxahachie, TX 75165

By Mary Taylor Hinds  
Mary Taylor Hinds, Deputy

SEAL

**OFFICER'S RETURN**

Came to hand at 3:00 o'clock PM, on the 14 day of OCTOBER 2008. Executed at 1722 MOUNT ST, DALLAS, TX in the COUNTY OF ELLIS, at 9:55 o'clock AM on the 15 day of OCTOBER 2008, by delivering to NARSTCO INC, REG AGENT JERRY GIBSON, Defendant in person a true copy of this citation together with the accompanying copy(ies) of the petition attached thereto and I endorsed on such copy of citation the date of delivery. To certify which I affix my hand officially this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

FEE: \$ \_\_\_\_\_

MICHAEL FENNELL  
SCH 2558 SHERIFF/ CONSTABLE/ PRIVATE SERVICE  
DALLAS County, Texas  
Michael Fennell Deputy  
AUTHORIZED PERSON



CAUSE NO. 77338

YDA NOV 10 AM 11:16

MELANIE REED  
DISTRICT CLERK  
ELLIS COUNTY, TX

IN THE DISTRICT COURT

ELLIS COUNTY, TEXAS

40<sup>TH</sup> JUDICIAL DISTRICT



















## I. GENERAL DENIAL

## II. DEFENSES

- DEFENDANT'S ORIGINAL ANSWER - Page 1

Employment Opportunity Commission, that exceed the scope of the charge, or as to which no timely and proper charge were filed, are barred.

6. NARSTCO's actions towards Plaintiff in each instance were based on legitimate nondiscriminatory business reasons unrelated to his race or protected activity.

7. Any claims under chapter 21 are barred, in whole or in part, to the extent Plaintiff did not timely, properly, and fully exhaust his administrative remedies or satisfy the administrative prerequisites to bringing suit under chapter 21.

8. Any claims under Title VII are barred, in whole or in part, to the extent Plaintiff did not timely, properly, and fully exhaust his administrative remedies or satisfy the administrative prerequisites to bringing suit under Title VII.

9. NARSTCO exercised reasonable care to prevent and correct promptly any alleged discriminatory work environment, and Plaintiff unreasonably failed to take advantage of the preventative or corrective opportunities provided by NARSTCO.

10. If Plaintiff shows that a motivating factor for any adverse employment action taken against him was his race or protected activity, NARSTCO will show that the same action would have been taken notwithstanding such motive(s), thus limiting Plaintiff's recoverable damages.

11. Any acts or omissions of NARSTCO found to be in violation of chapter 21 or Title VII were in good faith and based on reasonable grounds for believing that the acts and omissions were not unlawful, and were without malice or reckless indifference to any of the Plaintiff's protected rights.

12. If Plaintiff shows that NARSTCO took any adverse employment action against him because of his race, NARSTCO will show that such action was contrary to its policies and

good-faith efforts to comply with chapter 21 and Title VII, such that punitive damages are not recoverable.

13. Plaintiff's claims for assault and intentional infliction of emotional distress are barred by the exclusive-remedy provision of the Texas Workers' Compensation Act. TEX. LAB. CODE § 408.001.

14. NARSTCO is not liable to Plaintiff for the acts of any of its employees that exceeded the scope of their employment.

15. NARSTCO did not authorize, direct, condone, ratify, or consent to any alleged unlawful or tortious acts, if any, by its employees, of which Plaintiff complains.

16. Plaintiff's claimed damages must be limited, or are not recoverable at all, to the extent he failed to mitigate them.

17. Plaintiff's claimed damages must be reduced by any earnings or benefits he received that he would not have received had his employment not ended as well as any savings in expenses that he would not have obtained had the action(s) about which he complains not been taken.

18. NARSTCO is entitled to offset any damages Plaintiff recovers in this action by the amount of any interim earnings he received during the period following the termination of his employment and the date judgment is entered.

19. Plaintiff fails to state a claim for an award of punitive damages because he has alleged no facts to support such an award.

20. Any award of compensatory or punitive damages under Chapter 21 must be made and limited in accordance with TEX. LAB. CODE § 21.2585.

21. Any award of compensatory or punitive damages under Title VII must be made and limited in accordance with 42 U.S.C. ' 1981a.

22. Any award of punitive damages on Plaintiff's assault or intentional infliction of emotional distress claims must be made in accordance with the U.S. and Texas Constitutions and Texas law governing or limiting the recovery of such damages.

23. NARSTCO reserves the right to raise additional defenses as may be discovered during the course of these proceedings.

### **III. REASONABLE EXPENSES**

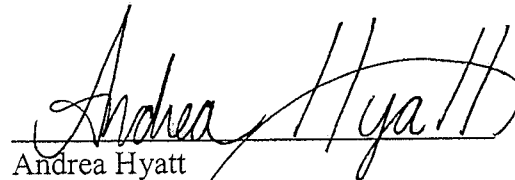
22. Plaintiff commenced this action without reasonable grounds to believe in the merits of his claims and the claims are frivolous, unreasonable, and groundless. Accordingly, upon dismissal of the action or judgment being entered in its favor, NARSTCO should be awarded the reasonable expenses, including attorney's fees, it necessarily incurred in defending against Plaintiff's claims.

### **IV. PRAYER**

NARSTCO asks that the Court enter judgment that Plaintiff take nothing from it, that it recover from Plaintiff its costs of court, and that it have other relief, at law or in equity, to which it may be entitled.

Dated: November 7, 2008.

Respectfully submitted:



Andrea Hyatt

Texas Bar No. 24007419

Marc H. Klein

Texas Bar No. 11563012

THOMPSON & KNIGHT LLP

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, Texas 75201-2533

Telephone: (214) 969-1577

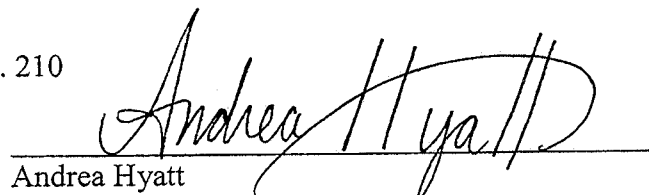
Facsimile: (214) 880-3209

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

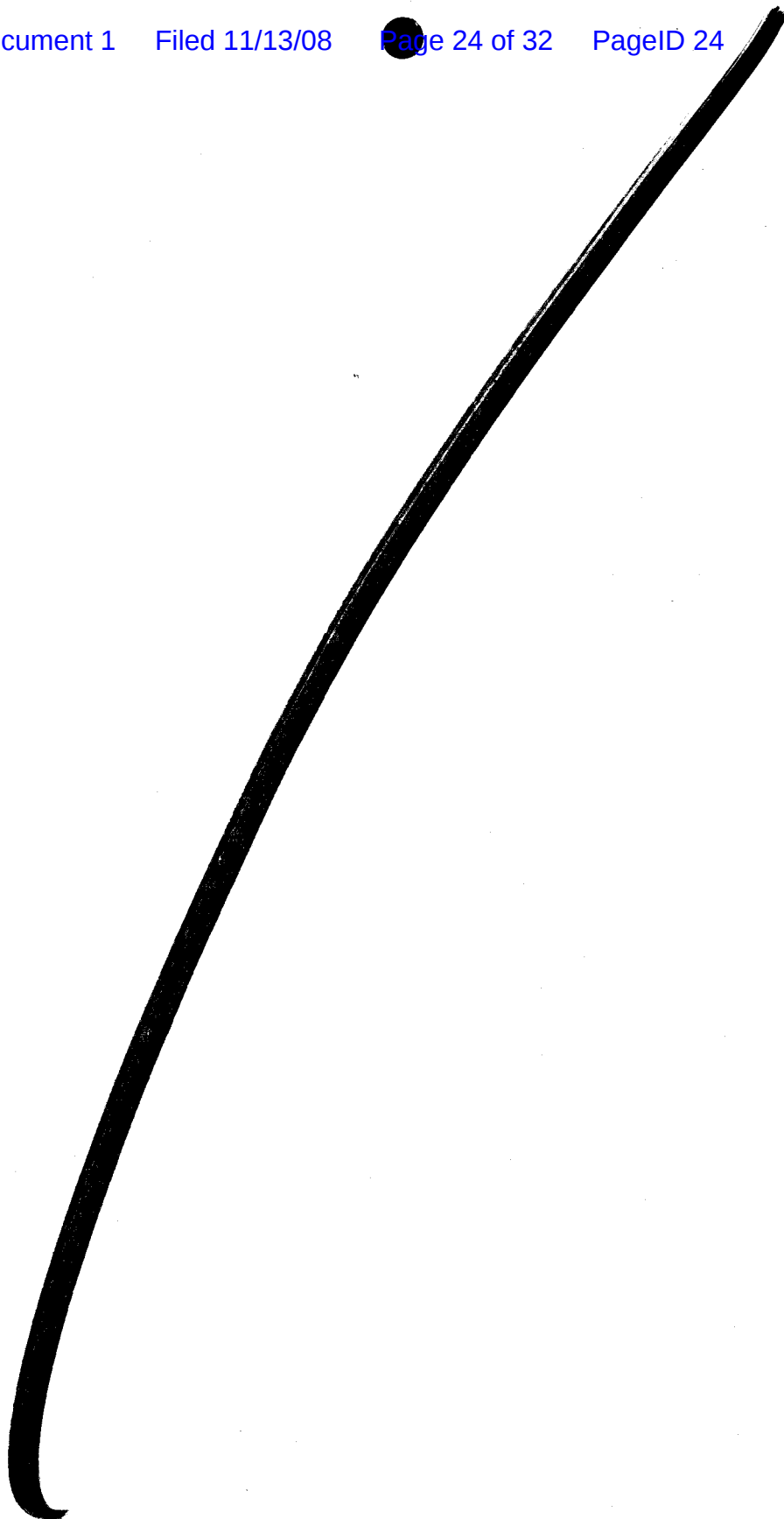
I hereby certify that on November 7, 2008, the foregoing document was served by  
certified mail, return-receipt requested, on plaintiff's counsel of record:

John E. Schulman  
Margaret K. Schulman  
The Schulman Law Firm, P.C.  
6440 North Central Expressway, Ste. 210  
Dallas, TX 75206



Andrea Hyatt

512969 000004 DALLAS 2394180.2



\* C V 7 7 3 3 8 \*

PLAINTIFF/PETITIONER  
DEFENDANT/RESPONDE  
REPORTER:

[illegible]



UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

WALDO PEREYDA,

Plaintiff,

v.

NARSTCO, INC.

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_


**DEFENDANT'S CERTIFICATE OF INTERESTED PERSONS AND ENTITIES**

Pursuant to Local Civil Rules 3.1(f) and 81.1(a)(4), NARSTCO, Inc. ("Defendant") identifies the following persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities known to be financially interested in the outcome of this case:

1. Waldo Pereyda — Plaintiff;
2. John E. Schulman and Margaret K. Schulman, The Schulman Law Firm, P.C. — Counsel for Plaintiff;
3. NARSTCO, Inc. — Defendant;
4. North American Railway Steel Tie Corp. — Parent company of NARSTCO, Inc.;
5. Marc H. Klein and Andrea Hyatt, Thompson & Knight LLP — Counsel for Defendant;
6. Great American Insurance Company — Insurer;
7. American Financial Group — Parent company of Great American Insurance Company;
8. Sean Keightley — President, NARSTCO, Inc. and part-owner North American Railway Steel Tie Corp.;
9. Ken Stephenson — part-owner North American Railway Steel Tie Corp.; and
10. Dino Piovesan — part-owner North American Railway Steel Tie Corp.

Dated: November 13, 2008.

Respectfully submitted:

  
\_\_\_\_\_  
Andrea Hyatt  
Texas Bar No. 24007419  
Marc H. Klein  
Texas Bar No. 11563012

THOMPSON & KNIGHT LLP  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201-2533  
Telephone: (214) 969-1577  
Facsimile: (214) 880-3209

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2008, the foregoing document was served by certified mail, return-receipt requested, on plaintiff's counsel of record:

John E. Schulman  
Margaret K. Schulman  
The Schulman Law Firm, P.C.  
6440 North Central Expressway, Ste. 210  
Dallas, TX 75206

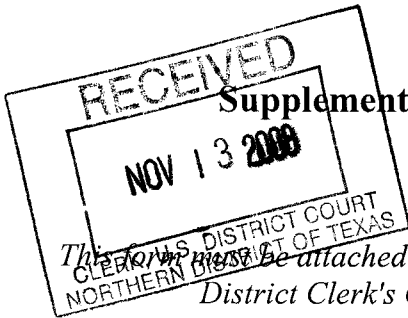
  
\_\_\_\_\_  
Andrea Hyatt

999999 999999 DALLAS 2420972.1

ORIGINAL

United States District Court  
Northern District of Texas

3-08 CV 2029-L



**Supplemental Civil Cover Sheet For Cases Removed  
From State Court**

**1. State Court Information:**

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

**Court**

**Case Number**

40th Judicial District Court  
of Dallas Court, Texas

77338

**2. Style of Case:**

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

**Party and Party Type**

**Attorney(s)**

Plaintiff: Waldo Pereyda

John E. Schulman  
State Bar No. 17833500  
Margaret K. Schulman  
State Bar No. 17833900  
The Schulman Law Firm, P.C.  
6440 N. Central Exprwy, Suite 210  
Dallas, Texas 75206  
214/361-2580

Defendant:  
NARSTCO, Inc.

Andrea Hyatt  
State Bar No. 24007419  
Marc H. Klein  
State Bar No. 11563012  
Thompson & Knight LLP  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201  
214/969-1700

3. **Jury Demand:**

Was a Jury Demand made in State Court? ☐ Yes ☒ No

If "Yes," by which party and on what date?

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date

4. **Answer:**

Was an Answer made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

Defendant  
Party

November 10, 2008  
Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

None

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

<u>Party</u>	<u>Reason</u>
None.	

7. **Claims of the Parties:**

Defendant submits the following summary of the remaining claims of each party in this litigation:

**A. Plaintiff's Claims**

Plaintiff is asserting claims for violation of (1) Title VII of the Civil Rights Act of 1964 (incorrectly referred to in Plaintiff's Original Petition as the "Equal Employment Opportunities Act"), (2) the Texas Commission on Human Rights Act, Chapter 21, Texas Labor Code, (3) 42 U.S.C. §1981, and also for (4) retaliation, (5) assault, (6) intentional infliction of emotional distress, (7) breach of contract, and for attorney's fees and expenses.

**B. Defendant's Defenses**

Defendant denies each of the plaintiff's allegations and denies that plaintiff suffered any of the damages he claims. Defendant contends that plaintiff is entitled to none of the relief he seeks by this action. Defendant also asserts several affirmative defenses to the plaintiff's claims.

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Waldo Pereyda	<b>DEFENDANTS</b> NARSTCO, Inc.
<b>(b) County of Residence of First Listed Plaintiff</b> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>County of Residence of First Listed Defendant</b> (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> John E. Schulman, The Schulman Law Firm, P.C., 0440 N. Central Exprwy, Suite 210, Dallas, TX 75206, (214) 361-2580	<b>Attorneys (If Known)</b> Andrea Hyatt and Marc H. Klein, Thompson & Knight LLP

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

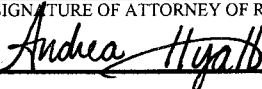
<b>V. ORIGIN</b> (Place an "X" in One Box Only)						Appeal to District Judge from Magistrate Judgment
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

<b>VI. CAUSE OF ACTION</b>	Brief description of cause: 28 U.S.C. § 1331. Plaintiff alleges claims for violation of the Title VII and 42 U.S.C. Sec. 1981
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ Unspecified	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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<b>VIII. RELATED CASE(S) PENDING OR CLOSED</b> (See instructions): JUDGE	DOCKET NUMBER
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DATE Nov. 13, 2008	SIGNATURE OF ATTORNEY OF RECORD 
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RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE	
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